

SANDRA ANN McCORMICK
Claimant

STATE OF KANSAS
Respondent

STATE SELF INSURANCE FUND
Insurance Carrier

Respondent requests that the Board find that claimant failed to notify respondent of her alleged work injury within the statutory time and that claimant did not meet her burden of proof establishing that she sustained an accident and injury arising out of and in the course of her employment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

Claimant had been an employee of respondent for 17 1/2 years, first at Winfield State Hospital and, in 1997, transferring to the Kansas Neurological Institute (KNI). Her position at KNI was a developmental disabilities trainer (DDT), teaching daily living skills to residents. As a DDT, claimant was expected to lift repetitively 20 to 30 pounds, to help residents in and out of wheelchairs and to protect residents from outbursts from aggressive residents, as well as doing laundry, cooking, cleaning and grocery shopping.

Claimant testified she first began having low back problems in 1988 while at Winfield State Hospital. In 1991, she was off work for three months after an incident where she injured her back lifting a resident off a toilet. She testified that after her back got better, it would still flare up when she lifted someone. However, she testified her back was not bothering her when she transferred to KNI in 1997.

While at KNI, claimant filed accident reports in 1999, claiming she injured herself while lifting a wheelchair, and in 2002, where she had a sharp onset of pain while helping a resident out of bed. Claimant testified that in 2005, she started having gradual low back pain which came and went. She did not miss any work and took over-the-counter pain medication. By March and April 2005, her back had gotten worse and pain was radiating into her right hip and right leg. She did not associate the pain with any particular physical activity but just the daily work she had to do. Claimant did, however, testify that during that time she was helping with a particularly aggressive resident who had to be lifted off the floor several times a day.

Claimant sought treatment from Dr. Michael Engelken on April 1, 2005. Dr. Engelken's records show that claimant had a history of low back pain with documented disc disease. Claimant testified that as recently as October 2004 she had physical therapy for her low back. Dr. Engelken recommended an epidural cortisone shot, which claimant at first rejected. However, one week later she returned complaining of worsening pain, and she told Dr. Engelken she was willing to have the shot. She testified that before she actually had the shot, she told her supervisor, Pam Lewis, that she was having back pain because of her job duties and was going to have the cortisone shot.

Claimant subsequently had a second epidural cortisone shot, but neither shot gave her any long-term relief. By mid-May 2005, she was getting worse and decided she could no longer continue working. She turned in her resignation on May 24, 2005. Claimant testified that during her exit interview, she said she was quitting because the work was getting to her back and she could no longer do the job. Her last day of work was May 31, 2005, and she has not been able to work since that time.

Claimant testified she did not turn in a workers compensation claim because the pain had come on so gradually rather than a sharp onset from a specific event, as had occurred in her previous accidents. However, claimant also contends that she communicated to her supervisor, Pam Lewis, that her job duties were causing her back to hurt. Claimant testified that although she attributed her back pain to work, she was not aware it was a compensable accident under workers compensation until after her application for unemployment benefits was denied and she consulted with an attorney. This is the basis for claimant's just cause argument.

Ms. Lewis testified that claimant never told her she was having back problems because of her job. Ms. Lewis testified that claimant indicated that she was going to have to quit because she would not be able to do the job. Ms. Lewis thought claimant was quitting because of a combination of her problems with blood clots and the fact that she was getting married and would not have to work.

Diane Waggoner handled workers compensation claims at KNI. She testified that she was first notified that claimant was making a claim for a work-related injury on August 11 or 12, 2005, when she received a letter from claimant's attorney. Ms. Waggoner testified that claimant had attended training in regard to filing workers compensation claims, the last being on March 21, 2005. She stated that claimant had two previous work-related injuries, but at no time did claimant report an injury in 2005.

Virginia Galvin is the Human Resources Director at KNI and is the custodian of the personnel records. She testified that claimant did not have a formal exit interview but may have had an informal interview with Ms. Lewis. On claimant's resignation form, she listed the reason for her resignation was "quitting."¹ Ms. Galvin did not follow up with claimant to determine why she resigned. Claimant did not tell Ms. Gavin that she had sustained an injury while working at KNI.

The record does not contain any expert medical opinion testimony concerning the cause of claimant's condition. Expert testimony is helpful but is not necessary to prove causation. Claimant's testimony is competent evidence to prove causation, and she relates her current complaints to her work activities with respondent. The office notes of claimant's treating physician, Dr. Engelken, at least by history, support claimant's contention.

This 41 Year old female presents with longstanding [history] of lower back pain with documented disc disease. Has been having more pain and stiffness in the past several weeks; is aware that lifting at work aggravates [symptoms].²

¹Galvin Depo., Ex. 2 at 2.

²P.H. Trans. (Oct. 5, 2005), Cl. Ex. 1 at 1.

Although this record presents a close question, the Board finds that claimant's work caused at least a temporary aggravation of claimant's preexisting back condition. In addition, the Board agrees with the ALJ's determination that there was just cause for claimant's failure to give notice within ten days of her last day worked, which is the ending date of her series of accidents. Therefore, her time for giving notice was extended to 75 days, making her August 11, 2005, notice timely.

WHEREFORE, it is the finding, decision and order of the Board that the Order of Administrative Law Judge Bryce D. Benedict dated October 11, 2005, is affirmed as to the finding of timely notice but reversed as to the finding that claimant did not suffer an accidental injury. The matter is remanded to Judge Benedict for further orders consistent herewith on claimant's request for preliminary benefits.

IT IS SO ORDERED.

Dated this _____ day of December, 2005.

BOARD MEMBER

c: Jan L. Fisher, Attorney for Claimant
Marcia L. Yates, Attorney for Respondent and its Insurance Carrier
Bryce D. Benedict, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director